The Solicitors' Journal

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CURRENT TOPICS

Legal Aid in Proceedings by the Queen's Proctor

A CIVIL aid certificate granted for the purpose of divorce proceedings does not cover subsequent proceedings commenced by the Queen's Proctor on the ground of non-disclosure of material facts in the divorce proceedings. This was the effect of the judgment of PEARCE, J., in *Wallis* v. *Wallis* (Queen's Proctor showing cause) on 14th March (*The Times*, 15th March). The petitioner had obtained a decree on the ground that his wife had deserted him for upwards of three years, but had failed to disclose that he had been living with another woman. His lordship decided not to rescind the decree, and held that the intervention by the Queen's Proctor was a separate " action, cause or matter " within the meaning of the Legal Aid (General) Regulations, reg. 5 (2), and that a separate application must be made for a civil aid certificate if a person who had been granted a certificate desired legal aid in the proceedings begun by the Queen's Proctor. His lordship ordered the petitioner to pay £25 by instalments towards the costs of the Queen's Proctor.

Professional Earnings

AN item of some significance in the National Income and Expenditure Preliminary Estimates, 1948 to 1951 (Cmd. 8486, H.M.S.O., 6d.), is the figure of professional earnings, which are estimated at £204,000,000 against £203,000,000 in 1950. As compared with this increase, profits of sole traders and partnerships, other than those of farmers, which are unchanged, rose from £867,000,000 to £885,000,000, while wages and salaries rose from £7,035,000,000 to £7,800,000,000. Professional earnings have thus risen by something less than ½ per cent., while profits have risen by over 2 per cent. and wages and salaries by nearly 10 per cent. At one time it was mainly the wage and salary earners who used to suffer in times of rising prices, and it would be wrong if we did not rejoice that this is no longer so to anything like the distressful degree of the bad old days. But members of both the learned and the unlearned professions may be permitted to ask, and to receive an answer, as to whether it is in the best interests of a civilised society to concentrate its energies on bettering the lot of the untutored majority if that can only be done by forgetting the needs of its most highly skilled workers. We believe that the restoration of the balance in favour of the professions is one of the present day's most urgent needs.

Justices of the Peace Act, 1949 : Further Commencement Order

ANOTHER instalment in the piecemeal bringing into force of the Justices of the Peace Act, 1949, becomes effective on 24th March. On that date, by virtue of the Justices of the Peace Act, 1949 (Commencement No. 4) Order, 1952 (S.I. 1952 No. 462 (C.3)), the provisions of s. 15, enabling a Rule Committee to be set up for magistrates' courts, will become

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operative. Under that section it will be the function of the Rule Committee to advise the Lord Chancellor on the making of rules for regulating and prescribing the procedure and practice to be followed in magistrates' courts and by justices' clerks (including, *inter alia*, rules prescribing the extent to which a justices' clerk may engage in private practice). As a corollary the order also brings into force on the same date Pt. II of Sched. VII to the Act with the result that existing rule-making powers of the Lord Chancellor are repealed, although the rules themselves are preserved by s. 15 (8). The committee will consist of the Lord Chief Justice, the President of the Probate, Divorce and Admiralty Division, the Chief Magistrate at Bow Street and other persons appointed by the Lord Chancellor, including at least one justices' clerk, one practising barrister and one practising solicitor; and it will, of course, be an entirely distinct body from the recently appointed departmental committee which, as noted in our last issue (*ante*, p. 167), is to consider a draft consolidation Bill relating to the jurisdiction, practice and procedure of magistrates' courts and draft rules supplementary thereto. It is, however, a little odd to find that the terms of reference of the departmental committee include a duty to report as to whether the draft rules "ought . . . to be recommended to the Lord Chancellor with a view to their being made by him under s. 15 of the Justices of the Peace Act, 1949, if the said Bill is passed." Although hypothetical, this question would appear to be within the province of the statutory Rule Committee as laid down by s. 15.

The Appellate Committee and Criminal Appeals

THE first criminal appeal to come before the House of Lords since the constitution of its Appellate Committee on 11th May, 1948, was heard on 13th March by VISCOUNT SIMON, LORD PORTER, LORD OAKSEY, LORD MORTON OF HENRYTON and LORD TUCKER (*The Times*, 14th March). The appellant was a police constable, and the Court of Criminal Appeal had dismissed his appeal against a conviction of office breaking and larceny. He had been convicted on one of eight counts and he had applied for, and been refused, a separate trial of that count. The main ground of his appeal was that evidence on the other seven counts, which were not supported by evidence connecting him with the crimes alleged, should not have been admitted against him on the trial of the eighth count. The committee reported that, in their opinion, the appeal should be allowed, and a motion was passed that further consideration of the report should be adjourned. The hearing of the appeal was arranged for the earliest possible date, in order that it should soon be known whether the appellant should be released, and a statement of their lordships' reasons is to be delivered at a later date.

Pedestrian Crossing Regulations Amendments

NEW pedestrian crossing regulations came into force on 12th March, to provide that if a crossing does not strictly comply with the regulations as to the layout of the lines of studs or black and white striping, it will still be valid, provided that the general appearance of the line of studs and the black and white stripes is not materially impaired. The first stripe at each side of an uncontrolled crossing is no longer required to be black. Bicycles, whether or not they are mechanically propelled, are exempt from the restrictions which may be imposed under the regulations on waiting vehicles on the approaches to a crossing. The restrictions also do not apply to vehicles which are stopping to give precedence to pedestrians using a crossing. In particular cases power is given to the Minister to authorise crossings over 16 feet or less than 8 feet wide.

Looking Backwards

MANY years ago, files of correspondence could be read in order of dates without having to start at the last letter and gradually work backwards until one arrived at what in natural sequence should have been the starting point. The writer's recollection is that the habit of keeping a letter file by placing the latest letter on top of previous letters dates back to the first world war, when it was imported from the Army, but other opinions as to the origin of this habit may be honestly held. The learned judge at the Leeds Assizes on 12th March called it "the solicitors' method," and suggested that, solicitors having placed letters in the order in which they received them, the copying clerk started at the top and worked through the file, with the result that the copies were fastened up back to front, like a Chinese puzzle. Most copying clerks are aware of the idiosyncrasies of the files, and it is not common to find copied correspondence presented to the court in this fashion. If it were, it would be a nuisance, and would merit no mere indulgent smile. Perhaps solicitors should resent being presented with this filing method as their exclusive property, but knowing that it never can be their reproach alone, their withers are unwrung.

Law Reform and Professional Bodies

IN a presidential address to the Holdsworth Club of the law faculty of Birmingham University, on 6th February, Dr. A. L. GOODHART, Q.C., Master of University College, Oxford, said that much progress in law reform had already been made, but much remained to be done. The law, as Dean Pound had said, must be stable and yet it could not stand still. Public opinion, the efforts of individuals or small groups, the recommendations of judges or professional men, and the works of legal authors tended to bring reform into action. Unfortunately professional influence acted only on the rarest occasions. Neither the Bar nor the solicitors had any permanent committees which concerned themselves with amendments in the law. A Ministry of Justice was unnecessary; it would be sufficient if in the Lord Chancellor's office a permanent official were established whose duty it would be to deal with matters of law reform. Those who read the *Law Society's Gazette* will find it difficult to agree that professional influence acts only on the rarest occasions. There is ample evidence that the Council of The Law Society frequently exert their influence, and with good effect. In *The Times* of 12th March the Chairman of the General Council of the Bar gave instances of how that Council exert their influence and referred to their own law revision committee.

Jurisdiction over Magistrates

IN a statement from the office of the Chancellor of the Duchy of Lancaster it is announced that the Mayor of Middleton, Lancashire, Mr. W. STUART, who on 4th February refused to fine two motorists summoned for parking too near a zebra crossing, has been debarred from sitting as a magistrate by an order of the Chancellor. The statement gave as the reason for making the order that "Mr. Stuart allowed his personal views on the policy of an Act of Parliament to influence his duty of impartially administering justice according to the law." On 4th February Mr. Stuart, as chairman of the bench, said: "I am a motorist, and I say that you cannot see these signs. It is ridiculous to bring these cases." The other magistrate present disagreed, and the cases were adjourned.

Costs

CONTRACT OR TORT

At one time, before the amendment to the county court scale of costs in September, 1950, it might not have been so important in some cases whether the costs were awarded on the highest county court scale, that is scale C as it then was, or the High Court scale. At the present time it is certainly advantageous, subject to what is said below, to have the costs awarded on the High Court scale, and the application of s. 47 of the County Courts Act, 1934, is thus of particular importance.

It will be recalled that that section provides that if an action is brought in the High Court which could have been brought in the county court, then, if the plaintiff recovers in an action founded on contract less than £40, or in an action founded on tort less than £10, he shall not be entitled to any costs of the action; whilst if in an action founded on contract he recovers £40 or more but less than £100, or in the case of an action founded on tort he recovers £10 or more but less than £50, then he shall recover costs only on the appropriate county court scale.

It will be clear from this that in the case of the recovery of a sum of, say, £75 it becomes a matter of importance to the parties whether the recovery resulted from an action founded on contract or an action founded on tort, and the recent case of *Jackson* v. *Mayfair Window Cleaning Co., Ltd., and Another* [1952] 1 T.L.R. 175; 96 Sol. J. 122, decided in December last, indicates that the answer to the question is not always crystal clear, even in cases where the claim against the defendant is pleaded, in the writ and pleadings, in tort or in contract as the case may be. As Barry, J., observed in that case, it is necessary to look at the true substance of the action to see on which side of the line it falls, and not merely at the form of the pleadings.

The difficulty is not a new one, and indeed the same question has arisen in one form or another from time almost immemorial. An early judgment on the subject is that of Lord Campbell, in the House of Lords, in the case of *Brown* v. *Boorman* (1844), 11 Cl. & F. 1, during the course of which his lordship observed that "... wherever there is a contract, and something to be done in the course of the employment which is the subject of that contract, if there is a breach of duty in the course of that employment, the plaintiff may either recover in tort or in contract." In short, even if there is a contract it does not necessarily mean that an action for damages must be founded necessarily on that contract, for the damage may have resulted from negligence arising from a breach of duty quite independent of the contractual obligations.

As far back as 1897 Smith, L.J. indicated, during the course of his judgment in the case of *Turner* v. *Stallibrass* [1898] 1 Q.B. 56, the test to be applied. His lordship observed that "The rule of law on the subject ... is that, if in order to make out a cause of action it is not necessary for the plaintiff to rely on a contract, the action is one founded on tort; but, on the other hand, if, in order successfully to maintain his action, it is necessary for him to rely upon and prove a contract, the action is one founded upon contract."

As stated earlier, the form which the pleadings take is not always conclusive, and in the case of *Jarvis* v. *Moy, Davies and Co.* [1936] 1 K.B. 399 the plaintiff's claim on the writ was for breach of contract, and although it was held in the Court of Appeal that the action was, in fact, founded in contract, Greer, L.J., indicated in the course of his judgment that the mere fact that the contract might be pleaded as the cause of action was by no means conclusive, for, as his lordship observed, there may be cases where, in order to found a case in tort, it may be essential as part of the history to allege that it commenced by a contract.

There, his lordship stated that the distinction between contract and tort is that "where the breach of duty alleged arises out of a liability independently of the personal obligation undertaken by contract it is tort, and it may be tort even though there may happen to be a contract between the parties, if the duty in fact arises independently of that contract. Breach of contract occurs where that which is complained of is a breach of duty arising out of the obligations undertaken by the contract."

In the recent case of *Jackson* v. *Mayfair Window Cleaning Co., Ltd, supra*, the pleaded claim of the plaintiff was for damages in tort, and although Barry, J., stated that that fact did not conclude the matter and that it was necessary to look at the true substance of the action, he in fact held that the plaintiff's claim was founded in tort, with the result that she was entitled to costs against the first defendant on the High Court scale.

This case has not added materially to nor altered the law with regard to the application of s. 47 of the County Courts Act, 1934, but it does serve to emphasise the fact that in determining whether or not High Court costs are applicable one must look not so much at the form of the pleadings as at the real substance of the action.

Subsection (2) of the section is of special interest since the amendment of the County Court Rules by the County Court (Amendment) Rules, 1950. The subsection states that where a plaintiff is entitled to costs on a county court scale only, the taxing master shall have the same power of directing on what county court scale and under what column in the scale costs are to be allowed, and of allowing any items of costs, as the judge would have had if the action had been brought in a county court.

Not only has the judge in a county court absolute discretion as to the scale of costs in any action in the county court other than in respect of actions for the recovery of a sum of money only, but he also has discretion to direct the registrar of the county court to allow or disallow any item in the scale of costs (see Ord. 47, r. 17 (1), of the County Court Rules, 1936, as amended); he may allow more counsel than one in certain circumstances (see r. 21 (1)); and he may direct that larger amounts than are authorised in the scale be allowed if the circumstances warrant. It will be seen from this that in a case where an action is brought in the High Court which could have been brought in the county court, and it is an action to which the county court scale only shall apply, then it is possible for the taxing master in the High Court to increase various items in the bill of costs to such an extent that the difference in amount between county court and High Court costs will to a great extent disappear.

Notwithstanding the provisions of subs. (1) of s. 47 it is provided by subs. (3) that in any action, whether founded on contract or on tort, the High Court may make an order allowing the costs or any part of them on the High Court scale where it is satisfied that there was sufficient reason for bringing the action in the High Court, or that the defendant or one of the defendants objected to the transfer of the action to the county court. In the case of the second defendants in the recent case of *Jackson* v. *Mayfair Window Cleaning Co., Ltd, supra*, costs were awarded on the High Court scale under this subsection.

In this respect it is important to notice that it is the amount ultimately recovered that governs the application of s. 47 and not the amount which the plaintiff claims, and although the plaintiff might have thought quite honestly that the damages that he had suffered were sufficient to warrant bringing the action in the High Court, if it afterwards transpires that such damages were not so large as was at first thought, so that the action might well have been brought in the county court, this will not be " sufficient reason for bringing the action in the High Court " to warrant subs. (3) being invoked (see *Finch* v. *Telegraph Construction and Maintenance Co., Ltd.* (1949), 65 T.L.R. 153; 93 SOL. J. 219).

Two points require notice with regard to this question of amount. The first is that if the original claim is greater than the limits prescribed by subs. (1), *supra*, but is reduced below those limits by a counter-claim of the defendants which is successful, then the subsection will have no application and the plaintiff is not thereby to be deprived of his costs on the High Court scale. On the other hand, if the claim is reduced by any matter pleaded and proved by way of defence then the subsection will apply, and so it will where the amount of the claim is reduced by set-off, as distinct from a counter-claim (see *Lovejoy* v. *Cole* [1894] 2 Q.B. 861). Secondly, the subsection will not apply where judgment is obtained for a sum less than the prescribed limits, if the difference between the amount of the original claim and the amount for which judgment is obtained was paid by the defendant directly to the plaintiff during the course of the action. Indeed, in the case of *Lamb* v. *Keeping* (1914), 58 SOL. J. 596, the subsection was held to have no application although the payment was made to the plaintiff the day after the writ had been issued and in ignorance thereof by the defendant.

It will be apparent from the above that there is no " rule of thumb " method for determining whether or not the action is one founded on contract or in tort, so that each case will have to be decided on its own particular facts.

J. L. R. R.

A Conveyancer's Diary

REVERTER UNDER THE SCHOOL SITES ACTS: A NEW PROVISION

To call a part of the Education Act, 1944, a " new " provision is, perhaps, a little misleading, but s. 86 (2) of this Act may, I think, fairly be so described in this sense, that so far its effect has not been to any considerable extent examined in any of the works to which the practitioner turns for guidance on the law of vendor and purchaser. This subsection is in the following terms:—

> " Where it appears to the Minister to be desirable that a scheme made under the Endowed Schools Acts, 1869 to 1908, in relation to any educational endowment should make provision for the sale of any land forming part of the endowment or the application of the proceeds of sale in accordance with the provisions of the scheme, but that such provision cannot be made by reason of the third proviso to s. 2 of the School Sites Act, 1841 (which provides that if any land granted in accordance with the provisions of that section ceases to be used for the purposes mentioned in that Act, the land shall revert to the grantor), he may by order direct that the said proviso shall not have effect in relation to the land:
>
> Provided that no such direction shall be given in relation to any land unless the Minister is satisfied either—
>
> (*a*) that the person to whom the land would revert in accordance with the said proviso cannot after due enquiry be found; or
>
> (*b*) that, if that person can be found, he has consented to relinquish his rights in relation to the land under the said proviso, and that, if he has consented so to do in consideration of the payment of a sum of money to him, adequate provision can be made for the payment to him of that sum out of the proceeds of sale of the land."

There is nothing in this Act making the fact that an order has been made by the Minister under s. 86 (2) proof, conclusive or otherwise, that the possibility of reverter to which the land comprised in the order was subject has been extinguished; and the purchaser has thus to decide for himself, as best he may on such indications as he can draw from the language of this provision, whether or not such an order may be accepted as a link in the title to property which, apart from such an order, would certainly be subject to reverter under the Act of 1841. This is a decision which is, of course, of importance to every purchaser, whatever the value of the property being purchased; but although the ordinary site subject to reverter under s. 2 of the Act of 1841 is seldom of great value (the size of the site is limited to an acre or less), some of these sites have appreciated enormously in value since the date of the grant. In a fairly recent case which came to my notice a site in a fully developed urban area was valued at over £10,000.

The reference in this provision to a scheme under the Endowed Schools Acts is a reference to s. 9 of the Endowed Schools Act, 1869, which gave power to the commissioners appointed under that Act to alter the existing trusts, and to make new trusts in lieu of existing trusts, upon which the endowment of any endowed school to which the Act applies is held. The expression " endowment " is defined by s. 4 of that Act to include, every description of property, real and personal, dedicated (in effect) to educational purposes, and this wide definition would *prima facie* cover the site of a school granted under the School Sites Act, 1841, so as to make such a school an endowed school for the purposes of this Act even if the school in question has no other property by way of endowment. But there are a number of exceptions to the kinds of school which otherwise would fall within the Act, among the excepted schools being certain named public schools (s. 8 (1)), most schools supported by public funds in 1869 (s. 8 (3)) and, most important of all so far as the number of the schools falling within this exception is concerned, " any school which, on the 1st January, 1869, was maintained wholly or partly out of annual voluntary subscriptions, and had no endowment except school buildings or teachers' residences, or playground or gardens attached to such buildings or residences " (s. 8 (2)). The date mentioned in this exception (the 1st January, 1869) is significant. Before the Education Act, 1870, most schools—at least in certain parts of the country—providing elementary education for the poorer classes were maintained in whole or in part by voluntary subscriptions, and if any of these subscriptions were annual subscriptions (as is likely enough to have been the case with most of such schools), the school maintained in whole or in part thereby was outside the provisions of the Act of 1869. This position

was altered by the Endowed Schools Act, 1873, which provided that in the case of any endowed school with an annual income, broadly speaking, of less than £100 from its endowments, the Act of 1869 should cease to apply to the school but that s. 75 of the Elementary Education Act, 1870, should apply thereto instead. This section empowered the education department to make schemes respecting schools or endowments which were outside the provisions of the Act of 1869 on the ground of receipt of an annual parliamentary grant, and s. 75 provided that the same powers might be exercised by means of such a scheme as might be exercised by means of any scheme under the Endowed Schools Act, 1869, and that such scheme, when approved by the education department, should have effect as if it were a scheme under the Act of 1869. Thus, within this class of school, a scheme under the Act of 1870 is a scheme under the Act of 1869, and consequently a scheme within the scope of s. 86 (2) of the Act of 1944.

Since an elementary school with little or no endowment (in the usual sense of that word) is the type of school the site of which is most likely to have been provided by a grant made under the School Sites Act, 1841, the result of this somewhat cursory survey of some of our forefathers' earlier legislative ventures in the field of free public education has been to show that, probably, whenever a school site is subject to reverter, the site may be "schemed" under the Act of 1869, and may, consequently, be deprived of its liability to reverter by an order made under s. 86 (2) of the Act of 1944. But a purchaser cannot be sure that an order which purports to be made under s. 86 (2) is within the powers conferred by that section unless he is satisfied, not only that a scheme has been made in relation to the land in question under the Endowed Schools Acts, but that such a scheme has been properly made. This last question may be a difficult one on which to satisfy a purchaser, since a scheme of the kind under consideration may not on the face of it contain all the evidence to show that it was not *ultra vires*. I have concentrated so far on a certain type of school, originally excepted from the Act of 1869, because it is the type of school which quantitatively is the most important from this point of view; but s. 8 of the Act of 1869 contains other exceptions to which reference should be made when the validity of a scheme under that Act is under examination: they cannot easily be summarised.

If a purchaser is asked to accept a conveyance of property on the footing that the right of reverter, to which it is *prima facie* subject, has been extinguished by an order made under s. 86 (2) of the Act of 1944, that order, in the absence of any provision of the kind I have mentioned making the order evidence of its own validity, must be shown to be valid. The consequence of any irregularity in this respect, I conceive, is to make the order a nullity, with the further consequence that not only could such a defective order be questioned under one of the forms of procedure which have taken the place of the old prerogative writs, but that even if the order is not so questioned, the right of reverter to which the land is subject is not effectively extinguished and the land reverts to the grantor or his successors in title as soon as it ceases to be used for the purpose for which it was granted. That is likely to happen, in most such cases, before the sale to the purchaser is completed, but it must in all such cases happen at the latest at the time of completion.

If I am right in the view I have formed of the effect of s. 86 (2) of the Act of 1944, the invariable rule for anyone acting for the purchaser of land which has been "schemed" within the meaning of that section must be to ask the vendor for a copy of the scheme under or in connection with which the order under s. 86 (2) has been made, and to reserve all rights of making fuller inquiries and requisitions on the validity of the order until after perusal of the scheme. This may very well lead to difficulties, since the general form of s. 86 (2) suggests that an order under that provision may in practice be made before a scheme of the kind in question: the object of the section is to remove an obstacle, in the shape of the liability to reverter to which a site may be subject, to the making of an effective scheme. In that case it will be for the vendor to persuade the Minister, if he can, that what would appear to be the normal sequence of events be reversed, and the scheme made before the order. This is a matter to which anyone acting for the vendor of land affected by an order under s. 86 (2) should give attention before contracts are exchanged.

The necessity of satisfying a purchaser that an order purporting to be made under s. 86 (2) is a proper order to be made under that provision apart, no difficulties should arise in connection with orders of this kind. It is true that, before the Minister can make an order under s. 86 (2), he has to satisfy himself that one or other of the sets of circumstances specified in the proviso exists in the case under consideration, and as this requirement takes the form of a proviso, failure to comply with it would *prima facie* make the order *ultra vires*. But since the litigation arising out of similar provisions contained in planning legislation a few years ago, and particularly the decisions of the Court of Appeal in *Robinson* v. *Minister of Town and Country Planning* [1947] K.B. 702 and of the House of Lords in *Franklin* v. *Minister of Town and Country Planning* [1948] A.C. 87, in which the formula requiring a Minister to be satisfied on certain points before proceeding to take administrative action was considered, it has not been easy (to say the least) to challenge the validity of administrative action on the grounds that the Minister could not, in the given case, have reasonably been satisfied on the matters on which the statute requires him to be satisfied before he can act. The requirements of the proviso to s. 86 (2) are not, therefore, matters on which a purchaser should raise requisitions unless he has some quite special reason for suspecting that those requirements could not have been complied with. The main concern of the purchaser, as I have tried to show, is the scheme under or in connection with which the order is made, and if that appears to be within the scope of s. 86 (2), it is unlikely that the order itself will be anything but effective to do what it purports to do.

"A B C"

At the annual general meeting of the HASTINGS AND DISTRICT LAW SOCIETY, held at the Queen's Hotel, Hastings, on 29th February last, the following officers were elected for the current year: President and Hon. Treasurer, Mr. A. W. K. Brackett; Vice-President, Miss D. M. W. Morgan; Hon. Librarian, Mr. E. Willings; Hon. Secretary, Mr. M. C. S. Langdon. The meeting was preceded by a luncheon, attended by more than forty members of the society. The society now has a membership of seventy-three.

The SOLICITORS' ARTICLED CLERKS' SOCIETY announce a games evening (including bridge, canasta, chess and mah-jongg) on 27th March, at 6 p.m., at The Law Society's Hall.

The PLYMOUTH LAW STUDENTS' SOCIETY held their second post-war dinner on 11th March. Mr. R. V. Morrell, the President, proposed the toast of "Our Guests," to which Mr. Edwin Broad, the President of the Incorporated Law Society of Plymouth, responded.

Landlord and Tenant Notebook

CONTROL: DOMINANT PURPOSE AGAIN

THE notion that "dominant purpose" should determine the status of combined premises, a question on which different High Court judges held different views in the early days of rent control, was thought to have been settled when a decision of the Court of Appeal negativing that notion was endorsed by the Legislature on the enactment of s. 12 (2) of the Increase of Rent, etc., Restrictions Act, 1920. The decision was that in *Epsom Grand Stand Association (Limited)* v. *E. J. Clarke* (1919), 35 T.L.R. 525 (C.A.): refusing to accept the contention that licensed premises were let "for business purposes" and therefore outside the (then) Act, Bankes, L.J., said: "The house was dwelt in, and it was let to the defendant for that purpose. In the fullest sense it was a dwelling-house, and none the less so because it was also a public-house"; Atkin, L.J., observed, rather more cautiously: "One of the principal objects of the legislation was to protect the homes of soldiers. There must have been numerous cases where a small business was carried on in those houses. The house in the present case was occupied as a dwelling-house, and the Act did apply to a dwelling-house *such as that* in the present case." What the provision of the 1920 Act mentioned did was to declare in proviso (ii): "The application of this Act to any house or part of a house shall not be excluded by reason only that part of the premises is used as a shop or office or for business, trade, or professional purposes."

When the scope of control was extended by the Rent, etc., Restrictions Act, 1939, s. 3, the second subsection enacted that the principal Acts should not, by virtue of that section, apply to licensed premises, to furnished premises except as provided in the principal Acts, or to certain "council houses." Then subs. (3) said that, subject to the provisions about licensed premises, the application of the Acts should not, by virtue of the section, be excluded by reason only that part of the premises was used as a shop or office or for business, trade or professional purposes; "and for the purposes of the Rent and Mortgage Interest Restrictions Acts, 1920 to 1938, as amended by virtue of this section, any land or premises let together with a dwelling-house shall, unless the land or premises so let consists or consist of agricultural land exceeding two acres in extent, be treated as part of the dwelling-house; but, *save as aforesaid*, the principal Acts shall not, by virtue of this section, apply to any dwelling-house let together with land other than the site of the dwelling-house."

It was freely assumed, in view of the above, that unless a tenancy agreement expressly or by implication limited user to non-residential user (*Barrett* v. *Hardy Bros. (Alnwick), Ltd.* [1925] 2 K.B. 220; *Wolfe* v. *Hogan* [1949] 2 K.B. 194 (C.A.)) or the *de minimis* principle could be invoked (see Lush, J.'s judgment in *Callaghan* v. *Bristowe* (1920), 36 T.L.R. 841, to which I will revert) a tenant of combined premises otherwise controlled would be protected.

But the latest authority, *Thompstone* v. *Simpson* [1952] 1 T.L.R. 447; 96 SOL. J. 165, decided by Hallett, J., at Newcastle Winter Assizes, goes to show that such an assumption is too wide. According to the headnote, the learned judge approved and applied *Pender* v. *Reid* [1948] S.C. 381 (I am not sure that the first verb aptly describes the mental process, the other case being not only a Scots one but a decision of the Inner House). Hallett, J., considered the facts analogous and the reasoning correct, and it will be convenient to say something about it first, for we are given a very full statement of the facts (except, perhaps, those of the terms of the tenancy) and a highly analytical judgment delivered by Lord Mackay, occupying over seven pages.

The premises (I propose to use English legal expressions) claimed in that case occupied an oblong site, 76 feet by 184 feet, some three-fourths of which was used as a coal ree: I am indebted to a native of the place concerned, Helensburgh, for the knowledge that this roughly corresponds to "coal yard." One entered by a gateway 16 feet wide, and a lorry so entering and driving straight on would come to the business part, including a garage used by lorries and not by any private car. But there was a two-storeyed dwelling "let in" to a corner of the space, with a very small yard of its own. Half its area projected into the street. On the front of this dwelling there was a board: "Thomas Reid & Sons, Coal Merchants." Since 1887 the premises had always been let to coal merchants who had lived in the house, incomers buying the business from outgoers; the defendant in the action had acquired the business in 1940 and "became tenant" at Martinmas in that year (presumably the transactions were connected) on 23rd March; in 1946 the plaintiff gave him notice to quit expiring 28th May. He pleaded control. The Sheriff-substitute gave judgment for the plaintiff on the ground that the land and buildings other than the site of the house were not let as ancillary to its use and enjoyment as a dwelling-house, but for the carrying on of a coal merchant's business. The Inner House agreed with him, though Lord Mackay expressed preference for "an adjunct to" in place of "ancillary to."

Lord Mackay first observed that s. 12 (2) of the 1920 Act uses the words "house" and "dwelling-house," and held that the two were differentiated. The main body of the subsection does in fact purport to delimit the scope of the Act, which "shall apply to a house or part of a house let as a separate dwelling, where, etc. . . . and every such house or part of a house shall be deemed to be a dwelling-house to which this Act applies." The second proviso is cited in my opening paragraph, and Lord Mackay's point was that (the section being still alive, though extended and improved) one has to begin by inquiring "Is this a house?" before examining the question whether it is a dwelling-house.

But s. 3 (3) of the 1939 Act, which alone could have brought the property within control, deals only with "dwelling-houses"; there was no intention to sweep in other houses which were *business premises* with a portion devoted to and used as an adjunct as the domicile of the business owner. (The Sheriff-substitute had considered the two last phrases contradictory; the mystification, declared the judgment reprovingly, had flowed from two acquired habits: (*a*) stating the problem as if it concerned *only* those selected words "any land or premises let together" occurring upon the ninth line, and so on to the end; and (*b*) of doing that most dangerous thing, shortening even the actual phrases, and all so as to produce an unfortunate example of the figure of speech called *chiasmus*.) When s. 3 (3) had so dealt with dwelling-houses—not houses—there came, *after a semi-colon, not a comma*, the words "but, save as aforesaid, the principal Acts shall not, by virtue of this section, apply to any dwelling-house let together with land," etc. In the phrase "any land or premises let together with a dwelling-house shall unless the land or premises so let" the word "so" was important, as it limited the scope of the provision to land, etc., let with

a *dwelling-house*. Parliament may well have contemplated a distinction between A being let together with B and B being let together with A.

On these lines, the court reached the conclusion that the coal ree premises were not a dwelling-house at all; and in *Thompstone* v. *Simpson* the premises were a garage with a flat above it, which had at one time belonged to a Co-operative Society whose manager had lived in the flat; they had sold it to the plaintiff, who had first employed, and then let the premises to, the defendant. Access could be gained to the flat either direct or through the garage, and in these circumstances Hallett, J., held that the reasoning of *Pender* v. *Reid* applied.

The learned judge found that the flat was a "separate entity" and at first sight one might think that the point was not of importance. For it was rather a different kind of separate entity from the house dealt with in *Pender* v. *Reid*, which was all but surrounded by non-dwelling accommodation and had to be approached through such. But the reason is, I think, that this new interpretation of s. 3 (3) of the 1939 Act and s. 12 (2) of that of 1920 cannot apply when living and business accommodation are not separable physically. It was on these lines that *Vickery* v. *Martin* [1944] K.B. 679 (C.A.) was distinguished. The premises in that case were a boarding-house, the tenant its proprietor living now in one part, then in another; and one cannot unscramble eggs. What the new decision means is that premises are not a dwelling-house if they consist of business premises and living accommodation *and* the latter is an adjunct to the former. Hence, the more cautious judgment of Atkin, L.J., in *Epsom Grand Stand Association (Ltd.)* v. *Clarke* is to be preferred to the wider terms of Bankes, L.J.'s judgment; but the *dictum* of Lush, J., in *Callaghan* v. *Bristowe* (1920), 36 T.L.R. 841, when he said that living accommodation in a warehouse would not make the premises protected, should no longer be ascribed to the *de minimis* principle, and may indeed be considered a correct indication of the law. The tail is not to wag the dog.

R. B.

HERE AND THERE

APPEAL TO THE LORDS

I THINK it is five years since the House of Lords had one of its rare criminal appeals; at any rate it was before the Law Lords took to hearing arguments in committee in May, 1948. The last criminal case up there must have been *Wicks* v. *Director of Public Prosecutions* [1947] A.C. 362. Now comes the Harris appeal to tidy up the rather unsatisfactory state of the law hanging doubtfully poised between *R.* v. *Sims* [1946] K.B. 531 and *Noor Mohamed* v. *R.* [1949] A.C. 182, between the Court of Criminal Appeal and the Judicial Committee. Lord Simon made one of his rare appearances in the Appellate Committee. Such appearances make one all the more sensible of the loss to the judicial deliberations of the House entailed in his long-continued absence, the reason for which must lie in the grave constitutional objections which he sees to the division of functions entailed in the delegation to a committee of the task of hearing appeals. There is a unique quality in his chairmanship—a smoothness, a clarity, a mastery, a confidence, and an authority—which dominates and gives form and style to the whole proceedings. In his eightieth year he is the wonder of the legal world. Rosy, alert, enjoying every turn of the argument, younger in all essentials than most of his juniors (he does not yet need glasses), he makes the present vividly conscious of the mould in which were cast the men of another generation. To return to the Harris case, its final stages illustrated one of the inconveniences of a hearing in committee. Since it was a criminal matter it was highly undesirable that the announcement of the final result should be delayed. Accordingly, on the day the hearing was concluded, a special sitting was arranged in the House itself when Lord Simon announced that the committee reported that the appeal should be allowed and moved that the further consideration of the report be adjourned. This, of course, did not technically amount to allowing the appeal (though some newspaper reports drew that rather premature inference), but it did enable an order to be made for the release of the appellant. The appeal will not be disposed of until the Lords have had time to prepare their detailed opinions. This procedure differs somewhat from that adopted in the case of William Joyce, when the House dismissed the appeal immediately after the termination of the arguments and delivered their reasons later.

ORDINARY REASONABLE DOG

THE "ordinary reasonable man" we know well, even if we have never had the happiness of meeting him personally, for he has been, in spirit at least, our constant companion in all our journeys through the common law. With the "average naughty child" (the somewhat improbable chrysalis from which in due season emerges the ordinary reasonable man) we are even more familiar, for we come across him in real life even more often than in the legal text-books. But now Sellers, J., has called on to the stage of our jurisprudence another character who should become very dear to the English heart and whose development we shall watch with the most lively interest, the "ordinary reasonable dog." We ourselves have never experienced the privilege of encountering in real life any animal remotely answering this description. All the dogs with whom we are acquainted seem to live in a condition of acute emotional instability urgently requiring psychiatric treatment. If they like you they lay the flattery on with a trowel; if they don't like you they give you all the Billingsgate they've got. They are totally uninstructed in the law of trespass, making no attempt to distinguish between an invitee, a licensee and a trespasser. They bark hysterically and indiscriminately at every user of the highway in the vicinity of their homes, thereby (like Matilda in Belloc's *Cautionary Tale*) ensuring that no one will pay the slightest attention to them in an actual emergency, a natural and probable consequence which the ordinary reasonable dog should surely envisage.

DOG'S CASE LAW

WE shall await with eagerness any note or report of the decision of Sellers, J., who held that the dog in question, an Alsatian, had overleapt the limits of canine reasonableness in biting the infant plaintiff, who was awarded £50 damages. To attain his objective the animal had broken his chain and covered a distance of fifteen yards, wriggling under an obstructing fence. "Even an aggravated dog" will not behave so "except in exceptional circumstances." This much on the negative side; but by way of positive, Lord Dunedin, twenty years ago, drew a picture which (though he did not actually use the phrase) may well stand as a portrait which might well be taken as typical of the "ordinary reasonable dog." It was the case of the dog shut in a car who became impatient and smashed a window (*Fardon* v. *Harcourt-Rivington* (1932), 146 L.T. 390). "I do not think," said Lord Dunedin, "there is any difficulty in supposing that the dog might get into an excited state. Dogs get bored, just as human beings do, and the bark is the dog's ordinary expletive. Besides that the dog may wish to get out for purposes of his own and if he was a well-bred dog he would intimate his desire by barking. And, last of all, he might have been irritated by a passer-by who in some way spoke to him and, as the dog considered, insulted him."

Lord Dunedin, you see, took a rather indulgent and understanding view of the scope of canine reasonableness. But even the standard of behaviour so set was surpassed by Laddie, the good dog of Aberdeen, whose successful appeal against the death sentence to the arbitrament of the Court of Justiciary in Edinburgh made history for his fellow dogs in establishing their right to plead "benefit of provocation" (*MacDonald* v. *Munro* [1951] J.C. 8). This admirable animal, a cross-bred collie-spaniel, had been given some bones to gnaw in the garden, an occasion universally acknowledged to be one properly dedicated to solitude and contemplation. Nevertheless, this was the very moment that two sturdy infants of three and four chose to fondle him or, in the idiom of their native town, "give him lovies," and one of them actually fell on to the bone. Any sensible human being has but to imagine how snappishly he would himself receive the advances of a person who showed so insensitive a disregard of the proprieties of time and place as to give him lovies at the dinner table. He would bite such a person's head off. Laddie did far less and merely nicked one of the infants in the cheek. The Lord Justice-General saw his point of view at once, observing: "I am bound to say that the circumstances seem to me quite consistent with a good-tempered and peaceful animal being momentarily exasperated or frightened or misled by the conduct of its playmates into committing an isolated act, which may have been unintentional or accidental but which, at worst, may have been in the dog's eyes seriously provoked by an apparent attempt to interfere with his bone." Yes, the outline of the ordinary reasonable dog is assuming definite shape in the law reports. The dog's day is dawning in the courts.

RICHARD ROE.

REVIEWS

Jarman on Wills. Eighth Edition. By RAYMOND JENNINGS, Q.C., B.C.L., assisted by JOHN C. HARPER, of the Inner Temple and Lincoln's Inn, Barrister-at-Law. 1951. London: Sweet & Maxwell, Ltd. In three volumes, £13 13s. net.

The law of wills is a prolific source of litigation. It has produced three text books of outstanding merit, Jarman, Hawkins and Theobald, each supreme in its own line: Jarman for its analysis of difficult questions, Hawkins for its brilliant statement of rules of construction and Theobald for its summaries of the effect of groups of cases.

Jarman was first published in 1841-2-3. It comprised 1,615 pages and dealt with some 2,250 reported cases. The present edition (the eighth) has 2,197 pages and the table of cases refers to about 14,000 cases. These figures show the enormous development of the law of wills in the past hundred years.

The fate of a text book is in the hands of its editors. Jarman has been fortunate; Wolstenholme, Vincent, Robbins and Sanger are all names still held in respect by the profession. The present edition well maintains the Jarman tradition. The orderly arrangement and the exhaustive analysis of all cases of difficulty which were characteristic of the original edition are preserved. The discussion of the rule in *Sibley* v. *Perry* (p. 1588) is a good example of the high standard attained.

A new chapter on the Inheritance (Family Provision) Act, 1938, has been contributed by Mr. Michael Albery. If the court may set aside a testator's expressed intentions on the ground that he has failed to make reasonable provision for his dependants, one is tempted to wonder whether jurisdiction should not be given to rectify a will in cases of obvious error or complete unintelligibility. It is stated in Vol. 1, p. 29: "But if words have been inserted in a will by mistake of the person who prepared it, and the attention of the testator is not called to them, they will be omitted from the probate, although the right words cannot be inserted. The court of construction, however, although it cannot (in the exercise of its ordinary jurisdiction) change the words of a will, may construe the will on the assumption that words have been inserted or omitted by mistake." But a perusal of Chapter XVI on the admissibility of parol evidence shows the difficulty in defining the precise limits of the jurisdiction of the court of construction.

The chapter on charitable gifts has been revised by Mr. G. M. Parbury and is a model of good editing. The enumeration (pp. 228-233) of gifts which have been held to be charitable should be very helpful.

The preamble of the Statute 43 Eliz. c. 4, as interpreted by the courts, fails to provide a clear guide to intending donors for charitable purposes, and it is regrettable that the terms of reference to the Lord Chancellor's committee did not extend to the legal definition of charity and to cases where charitable purposes are so "mixed up with other purposes of such a shadowy and indistinct nature that the court cannot execute them" (Jarman, p. 254). An enactment that in such cases the charitable purpose should prevail, the non-charitable purposes being ignored, would usually give effect to the real intention of the testator. Chapter LII states the new order of application of assets in discharge of debts, etc. But there is no comprehensive account of the effect of the will in controlling the provisions of s. 33 of the Administration of Estates Act, 1925, in the case of a partial intestacy. The reference on p. 712 to *Re Sullivan* and *Re McKee* is hardly adequate.

In Chapter LVII the summary of "the rules of construction" prepared by Mr. Jarman is reproduced. It would be more accurate to call them "principles of construction," to distinguish them from the rules of construction applicable to particular words or groups of words. They are, however, still sound and should be on the table of every practitioner. But it is surprising to find no discussion of the recent tendency of the courts to reject rules of construction and to reserve complete freedom of interpretation.

The preface refers to *Perrin* v. *Morgan* [1943] A.C. 399 as "undoubtedly one of the most important and interesting cases on the construction of wills in recent years." Its effect on the meaning of "money" is explained on p. 1011. But a discussion of the bearing of their lordships' opinions on the rules of construction as applied to wills would have been useful. Mr. Vaughan Hawkins wrote (Preface to Construction of Wills): "A rule of construction may always be reduced to the following form: certain words or expressions, which may mean either *x* or *y*, shall, *prima facie*, be taken to mean *x*. A rule of construction always contains the saving clause, 'unless a contrary intention appears by the will'." Mr. Hawkins then referred to "the old rules, some of very ancient date, not a few very inconvenient in their operation, and not seldom traceable to a misconception of the cases on which they originally rested: secondly the more modern rules, chiefly relating to minor matters and subordinate parts of the testamentary disposition, and in many cases useful and beneficial to the intention . . . It seems now generally recognised that the utility of rules of construction is almost confined to the smaller questions arising on wills: that their function is to remedy some of the ordinary slips and ambiguities of language, and to supply the omissions of the testator in points of detail not effecting the vital parts of the disposition; and that upon wide and general questions, where the whole frame and language of the will bears on the construction, no general rules can usefully be laid down."

In *Perrin* v. *Morgan* their lordships rejected the "alleged fixed rule of construction" as to the meaning of money. This rule was clearly one of the "old rules" referred to by Mr. Hawkins and there appears to be nothing in their lordships' opinions to justify the view that the rules of construction when

applied on the principles expounded by Mr. Hawkins are to be regarded as obsolete.

We are reminded (p. 913) that a power for executors or trustees to determine questions so far as it purports to oust the jurisdiction of the court is void as being contrary to public policy. It is submitted that an Act conferring such a power on executors and trustees subject to the right of a beneficiary to challenge the decision by taking proceedings within a limited time would be of great benefit to the community.

Finally, it may be said that the new edition of Jarman is probably the most useful legal text book published in recent years. No Chancery chambers can afford to be without it.

Law and Practice of Marine Insurance. Second Edition. By HOWARD B. HURD, Honorary Member and Past Chairman of the Association of Average Adjusters, Member of the International Maritime Committee. 1952. London: Sir Isaac Pitman & Sons, Ltd. 40s. net.

Practical experience is generally a valuable asset. Mr. Howard B. Hurd, the late author, had been an average adjuster for many years. Mr. P. R. Bennett, who has undertaken the completion of the second edition of this book, also has had long experience. Both were past Chairmen of the Association of Average Adjusters. Their practical knowledge is reflected by the excellent presentation of the subject-matter. Throughout there is a concise outline of the law, coupled with a sagacious explanation of important features. In recent years, owners of maritime property have become increasingly aware of their liabilities at law, with the result that demand for insurance protection to cover the liabilities has grown. A full, but quick, consideration of the points is not a simple matter for owners and those called upon to advise them. This is where the book renders a valuable service. It is succinct, and the general lay-out is good, with well-arranged references to statutes and case law on the subject.

NOTES OF CASES

HOUSE OF LORDS

CONFLICT OF LAWS: FOREIGN SOVEREIGNS: IMMUNITY: GOLD BARS DEPOSITED WITH BANK OF ENGLAND

United States of America and Republic of France *v.* Dollfus Mieg et Cie S.A. and the Bank of England

Lord Jowitt, Lord Porter, Lord Oaksey, Lord Radcliffe and Lord Tucker. 25th February, 1952

Appeal from the Court of Appeal.

A French company was the owner of sixty-four identifiable gold bars which were deposited in a private vault at Limoges, the key of which was retained by the company. When the Germans were driven out of France in 1944, they seized these bars and took them to Germany, where they were found by American troops in 1945. In September, 1946, a tripartite Commission was set up by the Governments of the United Kingdom, United States of America and France, and in July, 1948, the sixty-four gold bars were sent to the Bank of England to be placed to the credit of a gold set-aside account in the name of the three Governments. In October, 1948, the French company issued a writ against the Bank of England claiming the delivery of the gold bars to them, damages for detinue and conversion and an injunction to restrain the bank from dealing with them. On the motion of the bank, Jenkins, J. (as he then was), ordered a stay of proceedings, on the ground that the action impleaded two foreign sovereigns, the United States of America and France. On appeal, it transpired that on various dates between 30th December, 1948, and 26th January, 1949, the bank inadvertently sold thirteen of the sixty-four bars; the Court of Appeal thereupon allowed the appeal and refused the bank's motion for a stay. The Governments of the United States of America and of France then moved the court for an order that they be joined as defendants, and Wynn Parry, J., allowed the application. In November, 1950, the two Governments applied for a stay of proceedings, which was refused by Romer, J. (as he then was), and his decision was affirmed by the Court of Appeal. The Governments appealed to the House of Lords.

LORD JOWITT said that the question for the decision of the House was whether the Governments, notwithstanding the delivery of the bars to the bank, still retained such an interest in them as to entitle them to have an action stayed. The bank became bailees of the gold bars and were bound to keep them intact pending further instructions. The foreign Governments could not be said to be directly impleaded, nor were they being indirectly impleaded since this was an action *in personam* brought against the bank. Under English law where there was a simple contract of bailment the possession of the goods bailed passed to the bailee. The doctrine of immunity should not be confined to those cases in which the foreign sovereign was either directly in possession of property by himself or indirectly by his servants, for if it were so confined it would not be applicable to the case of any bailment. There was nothing in any decided case to support any such limitation. The action should be allowed to continue as to the thirteen bars only.

The other noble and learned lords concurred. Appeal allowed.

APPEARANCES: *Sir Hartley Shawcross*, Q.C., and *Denys Buckley* (*Treasury Solicitor*); *Sir Andrew Clark*, Q.C., and *R. O. Wilberforce* (*Slaughter & May*); *Geoffrey Cross*, Q.C., and *H. C. Lee* (*Freshfields*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

COURT OF APPEAL

LANDLORD AND TENANT: BREACH OF COVENANT TO REPAIR: CLAIM FOR DILAPIDATIONS

Haviland and Others *v.* Long and Another

Somervell and Denning, L.JJ., and Roxburgh, J. 12th February, 1952

Appeal from Lloyd-Jacob, J. ([1951] W.N. 532; 95 SOL. J. 817).

The plaintiffs were the landlords, and the defendants the tenants of premises let under a full repairing lease ending on 25th March, 1949. The third parties were sub-tenants of part of the premises. On the expiration of the lease, it was found that there were dilapidations, which were estimated to cost £1,170 to put into repair. Before the expiration of the lease, the plaintiffs had entered into a new lease with different tenants, upon terms that the tenants would put the premises into good repair and were to receive anything recovered by the landlords by way of dilapidations. The rent agreed was an economic rent for the premises in good repair. Judgment was given below for the plaintiffs against the defendants for £1,170, and for the defendants against the third parties for £600. The Landlord and Tenant Act, 1927, provides by s. 18: "Damages for a breach of a covenant or agreement to keep or put premises in repair during the currency of a lease, or to leave or put premises in repair at the termination of a lease . . . shall in no case exceed the amount (if any) by which the value of the reversion (whether immediate or not) in the premises is diminished owing to the breach of such covenant or agreement as aforesaid." The defendants appealed.

SOMERVELL, L.J., said that the Act of 1927 was not aimed at cases of the present type, in which the premises were going to be re-let, but at cases where they were going to be demolished or used for different purposes, so that no repairs would be carried out. It had been argued for the defendants that the plaintiffs, by virtue of the covenants in the new lease, were not financially interested in the question of dilapidations, and had suffered no damage to their reversion. But when that lease was executed, they had a conditional right to recover the damage to the reversion, measured by the cost of repairs; and the new tenants would not have agreed to the rent stipulated if the landlords had not had that right and assigned it to them, as they would otherwise have had both to pay the full rent for a house in repair and to pay for the repairs. The governing consideration was that the repairs had to be done.

DENNING, L.J., and ROXBURGH, J., agreed. Appeal dismissed.

APPEARANCES: *Cyril Salmon*, Q.C., and *C. T. Salkeld Green* (*Rodgers, Gilbert & Horsley*); *Eric Sachs*, Q.C., and *D. C. Bain* (*Janson, Cobb, Pearson & Co.*); *Claude Duveen* (*Forsyte, Kerman and Phillips*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

COSTS: MOTOR CAR COLLISION: PARTIES EQUALLY TO BLAME

Smith *v.* W. H. Smith & Sons, Ltd.

Evershed, M.R., Jenkins and Hodson, L.JJ. 18th February, 1952

Appeal from Oxford County Court.

The plaintiff's car and the defendants' van came into collision; the plaintiff claimed and the defendants counter-claimed for damages for negligence. The county court judge held that each party was equally to blame, that the damages on each side were equal within a few shillings, and dismissed both claim and counter-claim with costs. As a result, the plaintiff had to bear the general costs of the action, while the defendants had to bear only such costs as were incurred by reason of the counter-claim (*Wilson* v. *Walters* [1926] 1 K.B. 511). The plaintiff appealed, contending that by reason of the provisions of the Law Reform (Contributory Negligence) Act, 1945, each party should have recovered judgment for half the damages proved.

EVERSHED, M.R., said that the plaintiff's contentions as to the effect of the Act of 1945 were right, and the judgment should have been in the form suggested. As the appeal should be allowed, the order below as to costs could not stand. It would not be right to reverse the order as to costs, giving to the plaintiff the costs of the action and to the defendants the costs of the counter-claim: that would be just as unfair as the order made below. Without wishing to lay down any general rule of practice, it was sometimes proper in cases of this kind to balance the costs of claim and counter-claim (see, for example, *William A. Jay and Sons* v. *J. S. Veevers, Ltd.* [1946] 1 All E.R. 646). In the present case it would be just to make no order as to costs below on the claim and counter-claim.

JENKINS, L.J., agreed.

HODSON, L.J., said that in *Cinema Press, Ltd.* v. *Pictures and Pleasures, Ltd.* [1945] K.B. 356 Lord Goddard, C.J., had referred to the observations of Lord Blanesburgh in *Medway Oil & Storage Co.* v. *Continental Contractors, Ltd.* [1929] A.C. 88 that judges should adjust "critically their orders as to costs if these orders are not sometimes to produce results at once unintentional and unjust"; and had added that the simplest way was to award costs in such proportions as the judge thought fair.

Appeal allowed.

APPEARANCES: *J. May* (*G. Howard & Co.*); *H. B. Grant* (*Brain & Brain*, Reading).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

ROAD ACCIDENT: COUNTER-CLAIM BY NEGLIGENT DEFENDANT AGAINST NEGLIGENT HUSBAND OF PLAINTIFF

Drinkwater *v.* Kimber

Singleton, Birkett and Morris, L.JJ. 29th February, 1952

Appeal from Devlin, J. ([1951] 2 T.L.R. 630; 95 SOL. J. 547).

The plaintiff was injured in an accident arising out of a collision between her husband's van, in which she was a passenger, and the defendant's car. At the hearing of the action, the defendant admitted liability, and damages were awarded against him in favour of the plaintiff. He counter-claimed against the husband, claiming contribution under s. 1 of the Law Reform (Contributory Negligence) Act, 1945, which provides that where any person suffers damage as the result partly of his own fault and partly of the fault of another person, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage. Devlin, J., held that the defendant was two-thirds to blame, and the husband one-third to blame, but dismissed the counter-claim on the ground that s. 6 (1) (*c*) of the Law Reform (Married Women and Tortfeasors) Act, 1935, which provides that "any tortfeasor . . . may recover contribution from any other tortfeasor who is . . . liable in respect of the same damage" was not applicable, as a wife could not sue her husband in tort, and that the Act of 1945 did not alter the position.

SINGLETON, L.J., said that s. 1 of the Act of 1945, on which the defendant sought to rely, did not set up a cause of action, but merely changed the old rule relating to the contributory negligence of a plaintiff; so that the decision that the husband might be liable as to one-third of the damages arising out of the accident did not mean that the defendant had a right against him for damages. The defendant had not suffered "damage" within the meaning of s. 1 of the Act of 1945; the accident had caused him no damage; his liability arose from the judgment given against him, which did not constitute "damage" within the meaning of the section.

BIRKETT and MORRIS, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *P. O'Connor* (*Hewitt, Woollacott & Chown*); *H. Glyn-Jones*, Q.C., and *F. G. Paterson* (*R. I. Lewis & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

CHANCERY DIVISION

CAPITAL PROFIT DIVIDEND: RELIEF FOR NON-DISTRIBUTION

Inland Revenue Commissioners *v.* Bell & Nicolson, Ltd.

Donovan, J. (sitting as an additional Judge). 16th January, 1952

Case stated by General Commissioners.

A company paid on 18th February, 1947, a dividend of £5,625 out of profits which arose not from any trade or business, but from the realisation of certain investments. This capital profit was not liable to income tax or profits tax in the hands of the company, nor was it susceptible of deduction of income tax at the source when distributed to the shareholders. The Inland Revenue Commissioners treated the dividend as among the distributions which had to be taken into account in considering what amount of relief from profits tax was due to the company in respect of undistributed profits, of which relief it had some during the relevant chargeable accounting period, viz., the year ending 31st December, 1947. The effect of so taking this dividend into account was to diminish the relief for non-distribution and thus to increase the amount of profits tax payable for that period. The company objected to the Commissioners' action on the ground that, since the dividend of £5,625 was paid otherwise than out of trading or business profits, it could not be reckoned as a distribution of profits for profits tax purposes. The General Commissioners decided in favour of the company and the Crown appealed.

DONOVAN, J., said that the point raised was purely one of construction of the relevant statutory provisions, and, in particular, of the Finance Act, 1947, s. 36 (1). A capital profit dividend was an "amount . . . distributed directly or indirectly by way of dividend" within the meaning of s. 36 (1) and, therefore, a "distribution" for the purposes of s. 35. There was no reason for not giving the statutory definition of "distribution" its natural meaning. The conclusion at which he (the learned judge) arrived was the same as that reached by Harman, J., in *Lamson Paragon Supply Co., Ltd.* v. *Inland Revenue Commissioners* [1951] 2 T.L.R. 723; 44 R. & I.T. 520. Appeal allowed.

APPEARANCES: *Heyworth Talbot*, K.C., and *Sir Reginald Hills* (*Solicitor of Inland Revenue*); *Cyril King*, K.C., and *F. N. Bucher* (*Burton, Yeates & Hart*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

WILL: TENANCY IN COMMON OR JOINT TENANCY

***In re* North; North *v.* Cusden**

Wynn Parry, J. 27th February, 1952

Adjourned summons.

By a will dated 3rd February, 1936, the testator appointed his two sons as his executors and bequeathed to them certain property "(or if sold during my lifetime such balance of the proceeds of such sale as is in my possession at the date of my death) . . . on condition that they agree to pay in equal shares to my wife . . . for the remainder of her life after my decease" a specified weekly sum. After the death of the testator in 1937 the two sons paid the widow the specified sum. On 1st January, 1951, one of the sons died. The court was asked to determine whether the interest of the sons was a joint tenancy or a tenancy in common.

WYNN PARRY, J., said that if the gift to the sons had stood alone, without the condition attached to it, it would have been very difficult to come to any other conclusion than that the gift created a joint tenancy. It was, however, a well established rule that anything that in the slightest degree indicated an intention to divide the property must be held to abrogate the idea of a joint tenancy (see *Robertson* v. *Fraser* (1871), L.R. 6 Ch. 696, 699). In *Kew* v. *Rouse* (1685), 1 Vern. 353, the facts were almost identical with the present case; if any authority were required to support the conclusion to which he (the learned judge) had come as a matter of construction and plain common sense, *Kew* v. *Rouse* provided it. That conclusion was that the words "on condition that they agree to pay in equal

shares to my wife . . ." constituted a sufficient pointer to the intention that the gift created a tenancy in common between the sons and was not a joint tenancy.

APPEARANCES: *B. L. Bathurst* (*Payne, Hicks, Beach & Co.*, for *Day & Son*, St. Ives, Huntingdon); *J. A. Brightman* (*Field, Roscoe & Co.*, for *Batten & Whitsed*, Peterborough).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

WILL ON PRINTED FORM: AMBIGUITY: RULE OF CONSTRUCTION

***In re* Stevens; Pateman *v.* James**

Wynn Parry, J. 28th February, 1952

Adjourned summons.

A testratrix, in a will made on a printed form, left blanks in the spaces for the names of the executors, and continued: "I give, devise and bequeath unto my brother H, also sister J, also sister E." J had died before the testatrix.

WYNN PARRY, J., said that it had been stated by Lord Esher, M.R., in *In re Harrison* (1885), 30 Ch. D. 390, 393, that it was a golden rule to read a will, if possible, so as to lead to a testacy and not an intestacy; it was clear that that statement was intended to enunciate a rule of general application. In the present case, the testatrix had not meant to die intestate but meant to deal with the whole of her property. In the result, the whole estate passed to the surviving brother and sister, as joint tenants.

APPEARANCES: *J. L. Arnold*; *J. Semken* (*Walter Jennings and Son*); *A. A. Baden Fuller* (*W. A. L. Osborn*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

WILL: GIFT: CONDITIONAL ON PERMANENT RESIDENCE IN ENGLAND: VALIDITY

***In re* Gape; Verey *v.* Gape**

Roxburgh, J. 13th March, 1952

Adjourned summons.

By a will made on 27th October, 1942, the testatrix directed that every person who should become entitled in possession to her residuary estate as tenant for life or in tail male or in tail should within six months "take up permanent residence in England, and in default of continuance of compliance with this condition or in case of subsequent discontinuance" a forfeiture should take place. The testatrix died on 30th December, 1950, and beneficiaries who were resident in the United States of America, and desired to continue to reside there, became entitled to an interest in the residue under her will. The court was asked to determine whether the residence clause was valid.

ROXBURGH, J., referring to *In re Hatch* [1948] Ch. 592, said that he had to construe the phrase "take up permanent residence in England," and to determine whether it embodied a concept which lacked a sufficient degree of certainty. If someone said that he was going to reside in South Africa, the phrase would present an incomplete mental picture and would be quite ambiguous, and if someone said that he was going to continue residing in South Africa, that would also embody a conception that lacked a sufficient degree of certainty. But if someone said that he was going to take up permanent residence in South Africa he would have thought that that conception was plain and precise; the clause in question was, therefore, valid. *Bell* v. *Kennedy* (1868), 6 M. (H.L.) 69; *Ramsay* v. *Liverpool Royal Infirmary* [1930] A.C. 588 considered.

APPEARANCES: *Peter Foster*; *Montgomery White*, Q.C., and *J. P. Hunter-Brown*; *K. Elphinstone*; *Geoffrey Cross*, Q.C., and *T. A. C. Burgess* (*Field, Roscoe & Co.*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

QUEEN'S BENCH DIVISION

ROAD TRAFFIC: UNAUTHORISED JOURNEY BY VAN DRIVER: WHETHER VEHICLE TAKEN WITHOUT OWNER'S CONSENT

Mowe *v.* Perraton

Lord Goddard, C.J., Jones and Parker, JJ.

7th February, 1952

Case stated by quarter sessions for West Kent.

On 18th April, 1951, the defendant, a van driver, at the end of his day's work, drove the van of which he was in charge to his home, instead of garaging it in accordance with his instructions. There he loaded the van with a radio gramophone, which he intended to take to his brother-in-law. On his way he was stopped by a police constable, who asked him whether he was driving with the owner's authority. Having explained the circumstances, he was charged and convicted before petty sessions of an offence against s. 28 (1) of the Road Traffic Act, 1930, which provides that "Every person who takes and drives away any motor vehicle without having either the consent of the owner thereof or other lawful authority" shall be guilty of an offence. On appeal to quarter sessions, it was contended for the prosecutor that the expression "takes and drives away" had the same meaning as "takes and carries away" in the law of larceny; that the defendant had, normally, custody and not possession of the van, and that his unauthorised act constituted an assumption of possession and a "taking" within the meaning of the subsection. On the defendant's appeal being allowed, the prosecutor appealed.

LORD GODDARD, C.J., said that the defendant, as between himself and his employers, had gone on a frolic of his own; that was reprehensible, and it might be that the insurance policy on the vehicle was such that he might have committed the offence of driving an uninsured vehicle. But it could not be said that he had committed the offence charged. Section 28 (1) was intended to meet the difficulty of convicting for larceny when a person took a motor car, drove it away, and abandoned it. Here the defendant used the vehicle of which he was in charge in an unauthorised way, but that did not constitute the taking or the driving away a criminal offence against s. 28 (1).

JONES and PARKER, JJ., agreed. Appeal dismissed.

APPEARANCES: *J. H. Buzzard* (*Solicitor, Metropolitan Police*); *John Gower* (*Beech & Taylor*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

RENT RESTRICTION: RENT AND RATES MORE THAN TWO-THIRDS OF RATEABLE VALUE OF PREMISES: TENANT'S AGREEMENT TO PAY RATES TO LANDLORD: LANDLORD'S AGREEMENT WITH RATING AUTHORITY TO PAY RATES

Sidney Trading Co., Ltd. *v.* Finsbury Corporation

Lord Goddard, C.J., Jones and Parker, JJ.

13th February, 1952

Case stated by a metropolitan magistrate.

By s. 12 (7) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, "Where the rent payable in respect of any tenancy of any dwelling-house is less than two-thirds of the rateable value thereof, this Act shall not apply to that rent or tenancy . . ." By s. 2 of the Landlord and Tenant (Rent Control) Act, 1949, "(1) A person shall not, as a condition of the grant . . . of a tenancy to which this section applies, require the payment of any premium in addition to the rent. (3) This section applies to any tenancy of a dwelling-house to which the principal Acts apply, such that when the dwelling-house is let under the tenancy it is a dwelling-house to which the principal Acts apply." On 22nd December, 1950, the appellants entered into a written agreement with a tenant whereby, in consideration of the sum of £41 paid by the tenant, the appellants let a flat for the term of one year from 22nd December, 1950, to the tenant at a rent of £5 4s. a year. The tenant by the same agreement agreed to pay to the appellants for transmission to the appropriate authorities all existing or future general and water rates. On 18th January, 1951, the appellants entered into an agreement with the rating authority whereby they agreed to pay to the rating authority the general rates enforced on the flat. The general rate in the borough of Finsbury was 19s. 6d. or 20s. in the £ at the relevant times. At all material times the rateable value of the flat was £8. Before the magistrate, the appellants contended that the rent of £5 4s. a year was less than two-thirds of the rateable value of the flat, viz., £8; that, accordingly, the Rent Restrictions Acts did not apply to it by virtue of s. 12 (7) of the Act of 1920; and that, therefore, the sum of £41 was not an illegal premium under s. 2 of the Act of 1949. The respondents contended that the rates payable by the tenant to the appellants must be included in the rent and that it therefore exceeded two-thirds of the rateable value. The magistrate, having accepted the respondents' contentions, convicted the appellants, who now appealed.

LORD GODDARD, C.J., said that the question to be decided was whether the flat was within the Rent Acts. The appellants

had thought out a subtle device for getting round the Acts, which they were perfectly entitled to do if they could, but in the present case they had not succeeded. It was common for a tenant to agree to pay his landlord a rent inclusive of rates, and to pay a further sum if the rates were increased. In the present case, shortly after the agreement of 22nd December, 1950, the appellants had entered into an agreement with the local authority whereby the appellants made themselves responsible for the rates, not as agent of the tenant, but as the person responsible for them. It was clearly laid down in *Property Holding Co., Ltd.* v. *Clark* [1948] 1 K.B. 630 and *Alliance Property Co., Ltd.* v. *Shaffer* [1949] 1 K.B. 367 that for the purposes of the Rent Acts, the court, in deciding what was rent, must look at the total monetary payment made by the tenant to the landlord; and for those purposes rent was not to be considered from the old common-law viewpoint as something issuing out of land for which distress would lie. In substance there could be no doubt that the monetary consideration for the flat—leaving the premium out of the question—was £5 4s., together with a certain sum for rates; that was the total of the tenant's obligations, and it mattered not whether the additional payment was for rates, services, or for furniture. In the present case—apart from the premium—the appellants were clearly receiving more than two-thirds of the rateable value of the flat, and the court could not have regard to the fact that the agreement with the local authority was made subsequently to the grant of the tenancy, for that agreement dated back to 1st October, 1950, and therefore any money which the appellants received for rates was not transmitted by them as the tenant's agents. From 22nd December, 1950, the appellants were receiving a sum of money which the tenant was obliged to pay, and were paying the rates out of their own pockets as principals. Accordingly, the flat was controlled under the Rent Acts, and an offence had been committed in taking a premium.

APPEARANCES: *H. Heathcote-Williams*, Q.C., and *Bernard Finlay* (*M. & H. Shanson*); *J. P. Widgery* (*Town Clerk, Finsbury*).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law.]

LEGAL AID COMMITTEE: CERTIFICATE GRANTED TO TRUSTEE IN BANKRUPTCY: CERTIORARI

R. *v.* Manchester Legal Aid Committee; *ex parte* R. A. Brand & Co., Ltd.

Lord Goddard, C.J., Jones and Parker, JJ.
14th February, 1952

Application for an order of certiorari.

On 22nd November, 1950, a debtor was adjudicated bankrupt, and a chartered accountant was appointed his trustee in bankruptcy. Two days after the adjudication the debtor was granted a certificate for legal aid to pursue a claim for damages for alleged breach of contract against R. A. Brand & Co., the applicants, by the Manchester Legal Aid Committee, set up under the Legal Aid and Advice Act, 1949. On 18th December, 1950, the certificate was discharged at the instance of the bankrupt, his claim being then vested in his trustee in bankruptcy. On 22nd March, 1951, the committee issued a certificate to the trustee in bankruptcy to proceed in the action for damages against the applicants. The applicants applied for an order of certiorari on the grounds that the committee had no power to grant such a certificate to a trustee in bankruptcy, and that there was no evidence on which they could grant it. (*Cur. adv. vult.*)

PARKER, J., reading the judgment of the court, said that both the trustee in bankruptcy and the committee had taken the view, no doubt *bona fide*, that in the case of a trustee in bankruptcy his own disposable income was quite irrelevant and that it was the disposable income of the bankrupt which alone was relevant. The disposable income was determined as *nil*, although the trustee's income was clearly substantial. What they had overlooked was that a trustee in bankruptcy was, *vis-à-vis* his opponent, personally liable for costs like any other litigant. There was power under s. 12 (3) of the Act to make special provision to cover the position of a trustee in bankruptcy, but no such provision had, as yet, been made, and it followed, therefore, that the committee, acting perfectly *bona fide*, had exceeded their jurisdiction. The more important question was whether the committee were a body against which the remedy by way of certiorari would lie. That there was no appeal from the committee other than by an aggrieved applicant who had been refused a certificate did not of itself make the committee amenable to certiorari. The committee were a body of persons having legal authority to determine questions affecting the rights of subjects, and so within that test laid down by Lord Atkin in *R.* v. *Electricity Commissioners; ex parte London Electricity Joint Committee Co.* (1920), *Ltd.* [1924] 1 K.B. 171, 204, 205. The real question was whether they had also to act judicially. The court had held recently that certiorari would lie to quash the decisions of rent tribunals, notwithstanding that such tribunals were entitled to act on their own knowledge and information and without a hearing, except on notice from a party. If, on the other hand, an administrative body had throughout to consider a question from the point of view of policy and expediency, and at no stage had before it any form of *lis*, it could not be said that it was under a duty at any stage to act judicially (see *Franklin* v. *Minister of Town and Country Planning* [1948] A.C. 87, 102). In the present case the legal aid committee were an administrative body in the sense that they were responsible for administering the Act; but they were quite unconcerned with policy. They could not refuse legal aid because the fund was becoming depleted, or because they thought that certain forms of action should be discouraged. They had to decide each matter solely on the facts of the particular case on the evidence before them, and apart from any extraneous considerations. In other words they had to act judicially and not judiciously. In the premises an order of certiorari would be granted and the civil aid certificate would be quashed.

APPEARANCES: *Sir Hartley Shawcross*, Q.C., and *L. Caplan* (*Herbert Oppenheimer, Nathan and Vandyk*); *Cyril Salmon*, Q.C., and *Hon. J. R. Cumming-Bruce* (*Hempsons*); *Neil Lawson* (*Jaques and Co.*, for *Barker & Midgley*, Blackpool); *J. P. Ashworth* (*Solicitors, Ministry of National Insurance*).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law.]

CENTRAL CRIMINAL COURT

POLITICAL PROPAGANDA: WHETHER CORRUPT PRACTICE

R. *v.* Tronoh Mines, Ltd., and Others

McNair, J., and a jury. 18th February, 1952

Trial on indictment.

Tronoh Mines, Ltd., a tin mining and finance company, their secretary, and The Times Publishing Company, Ltd., were charged on indictment with unlawfully incurring expense on 19th October, 1951, on account of the issue in *The Times*, which was owned by the third defendants, of an advertisement prepared and paid for by the first and second defendants. This advertisement strongly attacked the Labour Government policy of dividend limitation, and stated that the forthcoming General Election would "give us all the opportunity of saving the country." The indictment by the first count charged the defendants with unlawfully incurring expense by the issue of the advertisement with a view to promoting the election of a non-Socialist candidate in the constituency of the Cities of London and Westminster in the General Election. The second count charged the defendants with similarly promoting the election of a Conservative candidate. The Representation of the People Act, 1949, provides, by s. 63 (1), "No expenses shall, with a view to promoting or procuring the election of a candidate at an election, be incurred by any person other than the candidate, his election agent . . . on account—(*a*) of holding public meetings or organising any public display; or (*b*) of issuing advertisements, circulars or publications; or (*c*) of otherwise presenting to the electors the candidate or his views or the extent or nature of his backing or disparaging another candidate."

MCNAIR, J., said that in his view of the construction of s. 63 it was not a case which could be properly left to the jury. This was said to be a test case. He would assume that the jury could properly find that the object of the defendants was to promote the anti-Socialist cause in the election. The defence had contended that the section, on its true construction, had not been contravened. It seemed that the words of (*c*) necessarily imported that items in (*a*) and (*b*) must also, if they were to be caught by the prohibition, be items which had the effect of presenting the views of the candidate to the electors or disparaging another candidate. Further, in the context the singular did not import the plural. The defendants' contention that the mischief of the subsection was aimed at a particular candidate seemed to be right; but it was sufficient for the defence that their construction

was reasonable and possible. As Lord Simonds, L.C., had said: "No man is to be put in peril by an ambiguity." No reasonable jury on the evidence could find that the advertisement was one presenting to the electors of any constituency any particular candidate, still less presenting a particular candidate in the constituency charged. This construction was supported by the consideration of other portions of the Act. The jury should therefore, bring in a verdict of "Not Guilty." Verdict of "Not Guilty."

APPEARANCES: *Christmas Humphreys* and *J. S. Bass* (*Director of Public Prosecutions*); *Gerald Howard*, Q.C., and *Griffith Jones* (*Charles Russell & Co.*); *Rodger Winn* and *H. E. Perkins* (*Stephenson, Harwood & Tatham*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

ROYAL ASSENT

The following Bills received the Royal Assent on 13th March:—

Agriculture (Fertilisers)
Festival Pleasure Gardens
Glasgow Corporation Order Confirmation
Judicial Offices (Salaries, &c.)
Merchant Shipping

HOUSE OF LORDS

PROGRESS OF BILLS

Read Second Time:—

Diplomatic Immunities (Commonwealth Countries and Republic of Ireland) Bill [H.C.] [11th March.
Industrial and Provident Societies (No. 1) Bill [H.C.] [11th March.
Motor Vehicles (International Circulation) Bill [H.L.] [13th March.
Poaching of Deer (Scotland) Bill [H.L.] [13th March.

Read Third Time:—

Cinematograph Bill [H.L.] [11th March.

In Committee:—

Distribution of German Enemy Property Bill [H.L.] [13th March.
Insurance Contracts (War Settlement) Bill [H.L.] [13th March.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time:—

Post Office and Telegraph (Money) Bill [H.C.] [14th March.

To provide for raising further money for the development of the postal, telegraphic and telephonic systems and of any other business of the Post Office, and for the repayment to the Post Office Fund of money applied thereout for such development; for treating capital expenditure incurred for the purposes of the Post Office Savings Bank as not incurred in the execution of the enactments relating to that Bank; and for purposes connected with the matters aforesaid.

Read Second Time:—

Directors, &c., Burden of Proof Bill [H.C.] [10th March.
Disposal of Uncollected Goods Bill [H.C.] [12th March.
Heating Appliances (Fireguards) Bill [H.C.] [14th March.

Read Third Time:—

City of London (Various Powers) Bill [H.C.] [13th March.

B. QUESTIONS

COURT OF APPEAL (DAMAGES)

Mr. STOREY asked the Attorney-General whether, in view of the Porter Committee's recommendation that the Court of Appeal should be given a wider discretion to vary the amount of damages awarded by a jury in an action for defamation, he would institute an inquiry into the whole law affecting damages with a view to its amendment. The ATTORNEY-GENERAL said that he assumed that Mr. Storey, in referring to the whole law affecting damages, had in mind the law relating to the powers of the Court of Appeal in regard to damages awarded by a jury, not only in cases of defamation but in all other cases as well. This matter fell within the terms of the Committee on Supreme Court Practice and Procedure, of which the Master of the Rolls was chairman, and he understood that it was being carefully considered by that committee. [10th March.

ROYAL COMMISSION ON MARRIAGE AND DIVORCE (ILLEGITIMATE CHILDREN)

Asked by Mr. JOHN PARKER whether he would recommend such alteration of the terms of reference of the Royal Commission on Marriage and Divorce as would enable them to consider and report upon the present laws about illegitimate children, the PRIME MINISTER said he was advised that this would not be desirable. The Commission already had a lot to do and the law relating to illegitimate children was complicated and would be better studied separately in the light of the Royal Commission's recommendations on the aspects of family life which had already been referred to it. [11th March.

TOWN AND COUNTRY PLANNING ACTS (COMPENSATION CLAIMS)

Mr. BOYD-CARPENTER stated that up to 29th February, 1952, the Central Land Board had prepared determinations for about 5,000 claims in England and Wales as falling within the *de minimis* provisions of s. 63 of the Town and Country Planning Act, 1947. Claimants were not required to state the amount claimed. [11th March.

STATUTORY RULES AND ORDERS AND STATUTORY INSTRUMENTS

Mr. BOYD-CARPENTER stated that in vol. XXV of "Statutory Rules and Orders and Statutory Instruments Revised," which would be published shortly, there would be a numerical list of instruments made under powers contained in legislation of a permanent nature (excluding instruments which were local in character) showing in Pt. I those in force on 31st December, 1948.

In Pt. II of this list would be found instruments made between 1st January, 1949, and 31st December, 1951. There would in addition be a table showing (among other things) which instruments had been revoked or had become spent between the latter dates. An index of all these instruments and details of the powers under which they were made would be found in "Guide to Government Orders," which would be published about April next and which would record the law as at 31st December, 1951. [12th March.

DOMESTIC ANIMALS (ILL-TREATMENT)

The HOME SECRETARY, in reply to a question as to prosecutions for ill-treatment of domestic animals, said the criminal statistics did not distinguish between offences of ill-treatment of domestic and other animals. During the twelve months ended 30th September, 1951, 1,012 persons had been charged with these offences of ill-treatment, of whom 869 had been convicted. Of these, 26 were sentenced to imprisonment. He had no reason to think that magistrates were unaware of their powers of imprisonment. He was not going to be a party to the Executive giving directions to magistrates as to how they should do their work. He thought that magistrates, who had the whole facts of each case before them, could best decide the appropriate penalty. [13th March.

MURDER CONVICTION, INQUIRY

Mr. SIDNEY SILVERMAN asked the Home Secretary whether, in the light of the further representations made to him, he had reconsidered the case of Walter Graham Roland and whether he would order an inquiry to see whether there had not been a grave miscarriage of justice. Did he appreciate that there was a considerable body of experienced opinion which took the view that a perfectly innocent man had been executed for murder? Sir DAVID MAXWELL FYFE said he had given the matter the gravest consideration and was satisfied that there had been no miscarriage of justice and that there was no need of a further inquiry. [13th March.

CHILD ADOPTION (PRIVATE AGENCIES)

Sir DAVID MAXWELL FYFE said that the law placed a duty on private adoption agents to notify the welfare authorities within seven days before possession was taken of a child for whose

adoption they had arranged and provided that the child should then be under the supervision of the authority. In addition, the court, before making an adoption order, had to satisfy itself by inquiry that the order would be for the welfare of the child. [13th March.

CORPORAL PUNISHMENT

Mr. MICHAEL STEWART asked how many adult persons, other than those already serving sentences of imprisonment, were convicted of offences rendering them liable to corporal punishment in the period of twelve months prior to the legal abolition of that penalty, and how many were convicted in the twelve months following that date. The HOME SECRETARY said that figures were only available in respect of the offences under s. 23 (1) of the Larceny Act, 1916, relating to robbery. The number of males, aged 17 and over, found guilty of such offences in the twelve months up to and including September, 1948, the month in which corporal punishment as a court sentence was abolished, was 322, and the number found guilty of such offences in the following twelve months was 321. [13th March.

ADVERTISEMENT REGULATIONS (APPEALS)

Mr. MARPLES stated that in the six months ended 31st December, 1951, inspectors of the Ministry of Housing and Local Government took thirty-nine appeals under the Advertisement Regulations. Thirty-four of these had been dismissed for reasons of either amenity or public safety. [13th March.

STATUTORY INSTRUMENTS

Benzole and Allied Products (Control) (Amendment) Order, 1952. (S.I. 1952 No. 499.)

Brightlingsea Water Order, 1952. (S.I. 1952 No. 430.)

Byssinosis (Benefit) Scheme (Revocation) Scheme, 1952. (S.I. 1952 No. 424.) 5d.

Coal Distribution (Restriction) (Amendment No. 2) Direction, 1952. (S.I. 1952 No. 435.)

County of Caernarvon (Electoral Divisions) Order, 1952. (S.I. 1952 No. 416.)

County of Carmarthen (Electoral Divisions) Order, 1952. (S.I. 1952 No. 436.) 5d.

County of Middlesex (Electoral Divisions) Order, 1952. (S.I. 1952 No. 429.) 5d.

County of Southampton (Electoral Divisions) Order, 1952. (S.I. 1952 No. 427.) 5d.

County of Worcester (Electoral Divisions) (Stourbridge) Order, 1952. (S.I. 1952 No. 428.)

Gold Coast (Constitution) (Amendment) Order in Council, 1952. (S.I. 1952 No. 455.) 6d.

House of Commons (Redistribution of Seats) (Bristol, North Somerset and Weston-super-Mare) Order, 1952. (S.I. 1952 No. 452.) 5d.

House of Commons (Redistribution of Seats) (Sunderland and Houghton-le-Spring) Order, 1952. (S.I. 1952 No. 453.) 5d.

Import Duties (Drawback) (No. 3) Order, 1952. (S.I. 1952 No. 466.)

National Health Service (General Medical and Pharmaceutical Services) Amendment Regulations, 1952. (S.I. 1952 No. 419.)

National Insurance (Determination of Claims and Questions) Provisional Amendment Regulations, 1952. (S.I. 1952 No. 425.)

National Insurance (Overlapping Benefits) Amendment Regulations, 1952. (S.I. 1952 No. 422.) 5d.

Pedestrian Crossings (General) (Amendment) Regulations, 1952. (S.I. 1952 No. 420.)

Pedestrian Crossings (London) (Amendment) Regulations, 1952. (S.I. 1952 No. 421.)

Pitcairn Order in Council, 1952. (S.I. 1952 No. 459.) 5d.

Pneumoconiosis (Benefit) Scheme (Revocation) Scheme, 1952. (S.I. 1952 No. 423.) 5d.

Poultry Pens, Fittings and Receptacles (Disinfection) Order, 1952. (S.I. 1952 No. 437.) 5d.

River Great Ouse Catchment Board (Reconstitution of the Yaxley Internal Drainage Board) Order, 1951. (S.I. 1952 No. 479.) 5d.

Stopping up of Highways (Croydon) (No. 1) Order, 1952. (S.I. 1952 No. 443.)

Stopping Up of Highways (London) (No. 7) Order, 1952. (S.I. 1952 No. 439.)

Summer Time Order, 1952. (S.I. 1952 No. 451.)

Superannuation (Local Government, Commonwealth and Foreign Service) Interchange (Scotland) Rules, 1952. (S.I. 1952 No. 433 (S. 15).) 6d.

Telephone Amendment (No. 1) Regulations, 1952. (S.I. 1952 No. 418.)

Telephone (Channel Islands) Regulations, 1952. (S.I. 1952 No. 417.) 5d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free]

NOTES AND NEWS

Honours and Appointments

The Lord Chancellor, acting under the authority of s. 61 of the Coal Industry Nationalisation Act, 1946, has appointed Sir JOHN CURTOIS HOWARD to be Chairman of the Panel of Arbitrators for the purposes of the Act. The Minister of Fuel and Power, acting under the authority of s. 12 of the Act and Regulations made under it, has appointed Sir John to be Chairman of the Central Valuation Board and of the Panel of Referees for the purposes of the Act. Sir John succeeds the Marquess of Reading, who has resigned on becoming Parliamentary Under-Secretary of State for Foreign Affairs.

JUDGE ADVOCATE GENERAL'S OFFICE

On the abolition of his office in consequence of the Courts-Martial (Appeals) Act, 1951, Mr. C. L. Stirling, C.B.E., Q.C., Deputy Judge Advocate General of the Forces, will be retiring on the 2nd June, 1952, after twenty-eight years' service in the Judge Advocate General's Office. The Lord Chancellor proposes to appoint Sir FREDERICK GENTLE, Q.C., to the new office of Vice Judge Advocate General.

The following appointments are announced in the Colonial Legal Service: Mr. J. S. ABERNETHY, Resident Magistrate, Tanganyika, to be Puisne Judge, Tanganyika; Mr. C. E. PURCHASE, Assistant Attorney-General, North Borneo, to be Attorney-General, North Borneo; Mr. C. W. REECE, Puisne Judge, Nigeria, to be Puisne Judge, Hong Kong; Mr. M. R. F. ROGERS, President of the Sessions Court, Federation of Malaya, to be Puisne Judge, Sarawak, North Borneo and Brunei; Mr. D. F. SHAYLOR, Registrar of the Supreme Court, Kenya, to be Resident Magistrate, Kenya; Mr. TAN THOON LIP, Assistant Registrar, Supreme Court, Singapore, to be Registrar, Supreme Court, Singapore; Mr. L. E. ZENON, District Judge, Cyprus, to be President, District Court, Cyprus; Mr. M. R. S. DOWNHAM to be Resident Magistrate, Kenya; and Mr. F. J. WHELAN to be Resident Magistrate, Northern Rhodesia.

Miscellaneous

CHESTERFIELD BANKRUPTCY DISTRICT TRANSFER

The Board of Trade announce that from 1st March, 1952, the responsibility for the Bankruptcy District of the County Court of Chesterfield has been transferred from the Official Receiver at Nottingham (Mr. E. C. Stimpson) to the Official Receiver at Sheffield (Mr. C. A. Taylor). This change has been made to facilitate business in view of the proximity of the Chesterfield district to Sheffield.

THE SOLICITORS ACTS, 1932 TO 1941

On the 7th March, 1952, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that the name of WILLIAM MICHAEL BASSADONE, of 27 Chancery Lane, London, and 15 Courper Street, Worthing, in the County of Sussex, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and enquiry.

On the 7th March, 1952, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that there be imposed upon JOHN PETCHELL BONNEY, of Hoghton

Chambers, Hoghton Street, Southport, a penalty of four hundred pounds (£400) to be forfeit to Her Majesty, and that he do pay to the complainant his costs of and incidental to the application and inquiry.

THE COUNTY OF LINCOLN, PARTS OF LINDSEY DEVELOPMENT PLAN

The above development plan was on 5th March, 1952, submitted to the Minister of Housing and Local Government for approval. It relates to all land situate within the County of Lincoln, Parts of Lindsey, and includes land within the under-mentioned districts.

A certified copy of the plan as submitted for approval has been deposited for public inspection at the County Offices, Lincoln. Certified copies or extracts of the plan so far as it relates to the undermentioned districts have also been deposited for public inspection at the places mentioned below :—

District	*Place*
Cleethorpes Borough ..	Council House, Cleethorpes, Lincs.
Louth Borough	Office of the Louth Borough Council's Surveyor, Town Hall, Louth, Lincs.
Scunthorpe Borough ..	Office of the Scunthorpe Borough Council's Engineer, Comforts Avenue, Scunthorpe, Lincs.
Alford Urban District ..	Office of the Alford U.D.C.'s Surveyor, Market Place, Alford, Lincs.
Barton-upon-Humber Urban District	Council Offices, High Street, Barton-upon-Humber, Lincs.
Brigg Urban District ..	Office of the Brigg U.D.C.'s Surveyor, Riverside, Brigg, Lincs.
Gainsborough Urban District	Office of the Gainsborough U.D.C.'s Surveyor, 6 Lord Street, Gainsborough, Lincs.
Horncastle Urban District ..	Office of the Horncastle U.D.C.'s Surveyor, Conging Street, Horncastle, Lincs.
Mablethorpe and Sutton Urban District	Council Offices, Mablethorpe.
Market Rasen Urban District	Office of the Market Rasen U.D.C.'s Surveyor, 3 Mill Street, Market Rasen, Lincs.
Skegness Urban District ..	Office of the Skegness U.D.C.'s Surveyor, Town Hall, Skegness, Lincs.
Woodhall Spa Urban District	Office of the Woodhall Spa U.D.C.'s Surveyor, Woodhall Spa, Lincs.
Caistor Rural District ..	Office of the Caistor R.D.C.'s Surveyor, Butter Market, Caistor, Lincs.
Gainsborough Rural District	Council Offices, 17 Morley Street, Gainsborough, Lincs.
Glanford Brigg Rural District	Office of the Glanford Brigg R.D.C.'s Surveyor, Bigby Street, Brigg, Lincs.
Grimsby Rural District ..	Office of the Grimsby R.D.C.'s Surveyor, Deansgate, Grimsby, Lincs.
Horncastle Rural District ..	6 Conging Street, Horncastle, Lincs.
Isle of Axholme Rural District	Office of the Isle of Axholme R.D.C.'s Surveyor, The Gables, Epworth, Lincs.
Louth Rural District ..	Office of the Louth R.D.C.'s Surveyor, Cannon Street, Louth, Lincs.
Spilsby Rural District ..	Council Offices, Spilsby, Lincs.
Welton Rural District ..	Office of the Welton R.D.C.'s Surveyor, 31 Clasketgate, Lincoln.

The copies or extracts of the plan so deposited may be inspected at the places mentioned above between 10 a.m. and 12 noon on any weekday and between 2 p.m. and 4.30 p.m. on any weekday except Saturdays. Any objection or representation with reference to the plan may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 3rd May, 1952, and should state the grounds upon which it is made. Persons making an objection or representation may register their names and addresses with the Lindsey County Council and will then be entitled to receive notice of the eventual approval of the plan.

OBITUARY

MR. J. H. BARRINGTON

Mr. John Hugh Barrington, solicitor, of Burnham-on-Sea and Bridgwater, died on 14th March, aged 48. He was admitted in 1925 and was clerk to the Bridgwater county magistrates and clerk to the Somerset Rivers Board.

MR. B. FAULKNER

Mr. Bertram Faulkner, solicitor, of Northampton, died on 12th March, aged 70. He was admitted in 1906 and was President of the Northamptonshire Law Society in 1926. He was chairman of the local appeal tribunal of the Ministry of National Insurance.

MR. W. H. HODGSON

Mr. William Harry Hodgson, solicitor, of Blackpool, died on 9th March, aged 67. He was admitted in 1911 and was chairman of Blackpool Magistrates. He had been president of the Blackpool branch of the British Legion and was president of the Comrades of the Great War Club in Blackpool.

MR. S. PIESSE

Mr. Stanley Piesse, retired solicitor, formerly of Cheapside, London, E.C.2, died on 24th February. He was admitted in 1902.

MR. A. E. PRIDDIN

Mr. Arthur Ernest Priddin, retired solicitor, of Houghton-le-Spring, died on 13th March, aged 88. He was admitted in 1884.

MAJOR A. H. SQUARE

Major Alwyn Holberton Square, M.C., solicitor, of Bolton Street, Piccadilly, London, W.1, died on 6th March. He was admitted in 1909, and served in the Royal Artillery in both world wars.

MR. C. E. STADDON

Mr. Charles Eric Staddon, O.B.E., Town Clerk of Beckenham, died on 7th March. He was admitted in 1913.

SOCIETIES

The annual general meeting of the BLACKBURN INCORPORATED LAW ASSOCIATION was held on 28th February, 1952. Mr. H. Backhouse, O.B.E., was elected President in succession to Mr. F. A. Heys, B.A., and Mr. G. F. Nuttall was elected Vice-President. Mr. F. G. Howarth and Mr. J. W. Hollows, LL.B., were re-elected Hon. Treasurer and Hon. Secretary respectively.

The seventy-sixth annual general meeting of the BRADFORD INCORPORATED LAW SOCIETY was held at the Law Library, Bradford, on Wednesday, 12th March, 1952, when the following officers were appointed: President, Mr. Herbert Duxbury; Senior Vice-President, Mr. J. A. W. Smith; Junior Vice-President, Mr. G. Ronald Walker; Joint Hon. Secretaries, Mr. Geoffrey H. Hall and Mr. Stanley Ackroyd.

The following are the results of recent debates of the UNITED LAW SOCIETY: On 4th February, 1952, the motion "That in the opinion of this House the artificial termination of pregnancies of unmarried females should be lawful" was defeated by five votes. On 12th February, 1952 (joint debate with the Law Students' Debating Society), the motion "That in the opinion of this House the unpaid magistrate is a hindrance to the proper administration of justice" was carried by eight votes. On 18th February, 1952, a moot point (B's cat invaded A's pigeon-cote and destroyed a valuable bird. A identified the cat and complained to B, who undertook to prevent any repetition of the occurrence. A week later an even more valuable pigeon belonging to A visited B's garden and, whilst engaged in scratching up B's recently sown sweet pea seeds, was killed by the cat. A sues B for the value of the pigeon. Will he succeed?) was answered in the negative by a majority of nine votes. On 25th February, 1952, the motion "That in the opinion of this House the law relating to *mens rea* in children should be altered" was defeated.

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Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).